

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

#### **Proposing rule making related to child care and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 109, “Child Care Centers,” Chapter 110, “Child Development Homes,” and Chapter 120, “Child Care Homes,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 237A.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 237A.3 and 2021 Iowa Acts, House File 260.

#### *Purpose and Summary*

These proposed amendments are implementing 2020 Iowa Acts, House File 260, which was enacted in the 2021 Legislative Session. The proposed amendments increase the number of children allowed at any one time in a nonregistered child care home to six or fewer if at least one of the children is school-aged. The number of children allowed to be cared for at any one time in a registered child development home is increasing from six or more to seven or more.

In addition, the Department is simplifying regulatory requirements by removing the definition of “part-time hours.” The rules are also updated to reduce the paperwork burden for providers by limiting the information needed in provider files to verify professional development requirements.

The requirement for preinspection of a private sewage disposal system prior to the opening of a child development home or child care home with a private sewage disposal system and for reinspection every two years, which can cause burdens to rural providers, is removed in collaboration with Department of Natural Resources staff.

The rules are updated to be in compliance with the Iowa Department of Public Health (IDPH) rules concerning lead paint remediation.

References to breast milk are removed from rule language regarding infectious disease control because breast milk is not a bodily fluid covered under universal precaution procedures for infectious diseases.

The requirements of the child care provider physical health form are simplified to require that reports be completed for all providers and for all members of a provider’s household who are 18 years of age or older.

The proposed amendments align the process for permission for children to attend activities away from a child development home or child care home with the current process for permission for children to attend activities away from a child care center.

The proposed amendments also simplify ratios in child development homes without increasing the total capacity and increase the number of infants allowed to be served in a home with two providers.

The proposed amendments remove language regarding substitutes in child care centers as substitutes are considered child care facility staff under federal rules and fall under the same requirements as other staff.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found, but the proposed amendments may assist in maintaining the number of existing child care home providers.

### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 31, 2021. Comments should be directed to:

Nancy Freudenberg  
Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

### *Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **109.2(3)“a”** as follows:

*a.* A provisional license may be issued or a previously issued license may be reduced to a provisional license for a period up to one year when the center does not sufficiently meet ~~all~~ standards imposed by law and these rules.

ITEM 2. Amend subrule 109.6(5) as follows:

**109.6(5) *Volunteers and substitutes.*** A volunteer shall be at least 16 years of age. All volunteers ~~and substitutes~~ shall:

- a.* No change.
- b.* Sign a statement indicating the volunteer ~~or substitute~~ has been informed of the volunteer’s ~~or substitute’s~~ responsibilities as a mandatory reporter.
- c.* Undergo the record check process when any of the following criteria are met:
  - (1) The volunteer ~~or substitute~~ is included in meeting the required child-to-staff ratio;
  - (2) The volunteer ~~or substitute~~ has direct responsibility for a child or children; or
  - (3) The volunteer ~~or substitute~~ has access to a child or children with no other staff present.
- d.* No change.

ITEM 3. Amend subparagraph **109.6(6)“a”(1)** as follows:

(1) Criminal and child abuse record checks shall be conducted for:

1. Each owner, director, staff member, ~~substitute~~, volunteer, or subcontracted staff person with direct responsibility for child care or with access to a child when the child is alone;
2. No change.

ITEM 4. Amend subparagraph **109.7(1)“e”(10)** as follows:

(10) Child development, ~~on or after August 1, 2017.~~

ITEM 5. Rescind paragraph **109.7(2)“d.”**

ITEM 6. Amend subparagraph **109.7(3)“e”(10)** as follows:

(10) Child development, ~~on or after August 1, 2017.~~

ITEM 7. Amend subrule 109.7(6) as follows:

**109.7(6) *Approved training.***

*a.* No change.

~~*b.* Training received in a group setting must follow a presentation format that incorporates a variety of adult learning methods. The material or content of the training must be obtained from one of the entities listed in paragraph “a” or an entity approved under paragraph “g.” Approved training shall be made available to Iowa child care providers through the child care provider training registry beginning July 1, 2009.~~

~~*c.* Training received in a group setting may include distance learning opportunities such as training conducted over the Iowa communications network, on-line courses, or web conferencing (webinars) if:~~

~~(1) The training meets the requirements in subrule 109.7(7);~~

~~(2) The training is taught by an instructor and requires interaction between the instructor and the participants, such as required chats or message boards; and~~

~~(3) The training organization meets the requirements listed in this subrule or is approved by the department.~~

~~*d.* The department will not approve more than eight hours of training delivered in a single day.~~

~~*e.* The department may randomly monitor any state-approved training for quality control purposes.~~

~~*f.* Training conducted with staff either during the hours of operation of the facility, during staff lunch hours, or while children are resting must not diminish the required staff ratio coverage. Staff shall not be actively engaged in care and supervision and simultaneously participate in training.~~

~~*g.* A training organization not approved by the department may submit for review to the department a request for child care training approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.~~

ITEM 8. Amend paragraph **109.9(1)“d”** as follows:

*d.* A physical examination report. Personnel shall have good health as evidenced by a preemployment physical examination. Acceptable physical examinations shall be documented on Form 470-5152, Child Care Provider Physical Examination Report. The examination shall ~~include any necessary testing for communicable diseases; shall include a discussion regarding current Advisory Committee on Immunization Practices (ACIP) recommended vaccinations;~~ shall be performed within six months prior to beginning employment by a licensed medical doctor, doctor of osteopathy, physician assistant or advanced registered nurse practitioner; and shall be repeated at least every three years.

ITEM 9. Amend subrule 109.10(5) as follows:

**109.10(5) *Infectious disease control.*** Centers shall establish policies and procedures related to infectious disease control and the use of universal precautions with the handling of any bodily excrement or discharge, ~~including or~~ blood and breast milk. Soiled diapers shall be stored in containers separate from other waste.

ITEM 10. Amend paragraphs **109.10(16)“a”** and **“b”** as follows:

a. The center director and on-site supervisor shall ensure that each staff member, ~~substitute~~, or volunteer knows the number and names of children assigned to that staff member, ~~substitute~~, or volunteer for care. Assigned staff, ~~substitutes~~, and volunteers shall provide careful supervision.

b. Any person in the center who is not an owner, staff member, ~~substitute~~, or volunteer who has a record check and department approval to be involved with child care shall not have unrestricted access to children for whom that person is not the parent, guardian, or custodian.

ITEM 11. Amend paragraphs **109.11(7)“a”** and **“b”** as follows:

a. Within one year of being issued an initial or renewal license, centers operating in facilities built prior to ~~1960~~ 1978 shall conduct a visual assessment for lead hazards that exist in the form of peeling, cracking or chipping paint or painted surfaces in need of repair. ~~If the presence of peeling or chipping paint is found, these lead hazards are found, the paint shall be presumed to be lead-based paint unless a certified inspector as defined in department of public health rules at 641—Chapter 70 determines that it is not lead-based paint it shall be assumed that lead-based paint is present on the surfaces, and the surfaces shall be repaired by an Iowa certified lead-safe renovator before a full license will be issued. If the presence of peeling or chipping paint is found, interim controls using safe work methods as defined by the state department of public health shall be accomplished prior to a full license being issued.~~

b. Within one year of being issued an initial or renewal license, centers operating in facilities that are at ground level, use a basement area as program space, or have a basement beneath the program area shall have radon testing performed as prescribed by the state department of public health at 641—Chapter 43. ~~Testing shall be required if test kits are available from the local health department or the Iowa Radon Coalition. Retesting shall be accomplished at least every two years from the date of the initial measurement if test kits are available from the local health department or the Iowa Radon Coalition.~~ If testing determines confirmed radon gas levels in excess of 4.0 picocurie per liter, a plan using radon mitigation procedures established by the state department of public health shall be developed with and approved by the state department of public health prior to a full license being issued.

ITEM 12. Amend rule **441—110.1(237A)**, definitions of “Child care home” and “Child development home,” as follows:

“*Child care home*” means a person or program providing child care to ~~five or fewer~~ any of the following children at any one time that is not registered to provide child care under this chapter, as authorized under Iowa Code section 237A.3.:

1. Five or fewer children.

2. Six or fewer children, if at least one of the children is school-aged.

“*Child development home*” means a person or program registered under this chapter that may provide child care to ~~six~~ seven or more children at any one time.

ITEM 13. Rescind the definition of “Part-time hours” in rule **441—110.1(237A)**.

ITEM 14. Amend rule **441—110.3(237A)** as follows:

**441—110.3(237A) Renewal of registration.** Renewal of registration shall be completed every 24 months. To request renewal, a provider shall submit Form 470-3384, Application for Child Development Home Registration, and ~~copies of certificates of training, which shall be retained in the registration file~~ training completion evidence either through certificates or as updated in Iowa’s early childhood and school age professional workforce registry (i-PoWeR). The registration renewal process shall include completion of child abuse, sex offender, and criminal record checks.

ITEM 15. Amend paragraphs **110.8(1)“j”** and **“k”** as follows:

j. Homes served by a private sewer systems sewage disposal system shall be ~~in compliance with discharge restrictions identified at 567—Chapter 69~~ operated and maintained to ensure the system is properly treating the wastewater and not creating an unsanitary condition in the environment. Discharge of untreated waste water from private sewage disposal systems is prohibited. ~~Compliance shall be~~

~~verified by the local board of health at the time of registration renewal and new registration. Concerns about noncompliance shall be referred to the local county sanitarian.~~

*k.* A provider operating in a facility built before ~~1960~~ 1978 shall assess and control lead hazards before being issued an initial child development home registration or a renewal of the registration. To comply with this requirement, the provider shall:

(1) ~~Conduct a visual assessment of the facility for lead hazards that exist in the form of chipping or peeling paint; Determine if painted surfaces on the interior or exterior of the facility are chipping, peeling, or cracking or in need of repair. Painted surfaces include walls, ceilings, windows, doors, stairs, and woodwork; and~~

(2) ~~Apply~~ If painted surfaces are in need of repair, hire an Iowa certified lead-safe renovator to make repairs or take training to become an Iowa certified lead-safe renovator. Iowa lead-safe renovators shall apply interim controls on any chipping, or peeling, or cracking paint found, using lead-safe work methods in accordance with and as defined by department of public health rules at 641—Chapters 69 and 70, unless a certified inspector as defined in 641—Chapter 70 determines that the paint is not lead-based paint; and.

(3) ~~Submit Form 470-4755, Lead Assessment and Control, as verification of the visual assessment and completion of interim controls, if necessary.~~

ITEM 16. Amend subrule 110.8(3) as follows:

**110.8(3)** *Medications and hazardous materials.*

*a.* to *c.* No change.

~~*d.* All new providers and providers renewing registrations after September 30, 2016, shall not provide medications to a child if the provider has not completed preservice/orientation training that includes medication administration.~~

*e. d.* The provider shall establish procedures related to infectious disease control and handling of any bodily excrement or discharge, including or ~~including~~ blood and breast milk. Soiled diapers shall be stored in containers separate from other waste.

ITEM 17. Amend subrule 110.9(1) as follows:

**110.9(1)** A provider file shall be maintained and shall contain the following:

*a.* A physical examination report. Providers and all members of a provider's household ~~over the age of 12~~ aged 18 years or older shall have good health as evidenced by a preregistration physical examination. Acceptable physical examinations shall be documented on Form 470-5152, Child Care Provider Physical Examination Report. ~~The physical examination shall include any necessary testing for communicable diseases; shall include a discussion regarding current Advisory Committee on Immunization Practices (ACIP) recommended vaccinations; shall be performed by a licensed medical doctor, doctor of osteopathy, physician assistant or advanced registered nurse practitioner within six months prior to the provider's registration; and shall be repeated at least every three years. All children residing in the household who are 12 years of age or younger must have the medical documentation outlined in paragraphs 110.9(4) "d," "f," and "g."~~

*b.* ~~Certificates or other documentation from the department verifying the following:~~ I-PoWeR records or certificates verifying required training completion as set forth in subrule 110.10(1).

(1) ~~Required training as set forth in subrule 110.10(1).~~

(2) ~~Completion of all record checks as required in subrule 110.11(3), at initial application, at each application for change, and at each application for renewal.~~

ITEM 18. Amend subrule 110.9(4) as follows:

**110.9(4)** *Children's files.* An individual file for each child shall be maintained and updated annually or when the provider becomes aware of changes. The file shall contain:

*a.* to *d.* No change.

*e.* A ~~For children under the age of six, a statement of health condition signed by a physician or designee and submitted annually from the date of the admission physical examination. For a child who is five years of age or older and enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the physician statement.~~

*f.* and *g.* No change.

*h.* For any child with allergies, a written emergency care plan in case of an allergic reaction. A copy of this information shall accompany the child if the child leaves the premises.

*i.* ~~A list~~ Documentation that is signed by the parent and names persons authorized to pick up the child. The authorization shall include the name, telephone number, and relationship of the authorized person to the child.

*j.* Written permission from the parent for the child to attend activities away from the child development home. ~~The permission shall include:~~

~~(1) Times of departure and arrival.~~

~~(2) Destination.~~

~~(3) Names of persons who will be responsible for the child.~~

*k.* and *l.* No change.

ITEM 19. Amend subrule 110.10(2) as follows:

**110.10(2)** *Approved training.*

*a.* No change.

~~*b.* Training received in a group setting must follow a presentation format that incorporates a variety of adult learning methods. The material or content of the training must be obtained from one of the entities listed in paragraph 110.10(2) “a” or an entity approved under paragraph 110.10(2) “h.”~~

~~*c.*~~ *b.* Approved training shall be made available to Iowa child care providers through the child care provider training registry i-PoWeR.

~~*d.* Training received in a group setting may include distance learning opportunities, such as training conducted over the Iowa communications network, online courses, or web conferencing (webinars) if:~~

~~(1) The training meets the requirements in subrule 110.10(3);~~

~~(2) The training is taught by an instructor and requires interaction between the instructor and the participants, such as required chats or message boards; and~~

~~(3) The training organization meets the requirements listed in this subrule or is approved by the department.~~

~~*e.*~~ *c.* The department will not approve more than eight hours of training delivered in a single day.

~~*f.*~~ *d.* The department may randomly monitor any state-approved training for quality control purposes.

~~*g.*~~ *e.* Training conducted with the provider ~~either~~ during the hours of operation of the facility, during provider lunch hours, or while children are resting must not diminish the required ratio coverage. The provider shall not be actively engaged in care and supervision and simultaneously participate in training.

~~*h.*~~ *f.* A training organization not approved by the department may submit a request for review to the department on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

ITEM 20. Amend paragraphs **110.13(1)“b”** and **“c”** as follows:

*b.* Of these six children, no more than four children who are 24 months of age or younger shall be present at any one time. Of these four children, no more than three may be ~~18~~ 12 months of age or younger.

*c.* In addition to the six children not in school, no more than two children who attend school may be present ~~for a period of less than two hours at a time.~~

ITEM 21. Amend subrule 110.14(1) as follows:

**110.14(1)** *Limits on number of children in care.*

*a.* No more than ~~six~~ eight children not attending kindergarten or a higher grade level shall be present at any one time.

b. Of these ~~six~~ eight children, no more than four children who are 24 months of age or younger shall be present at any one time. Of these four children, no more than three may be ~~48~~ 12 months of age or younger.

c. In addition to the ~~six~~ eight children not in school, no more than four children who attend school may be present.

~~d. In addition to these ten children, no more than two children who are receiving care on a part-time basis may be present.~~

~~e. d.~~ No more than 12 children shall be present at any one time when an emergency school closing is in effect.

~~f. e.~~ If more than eight children are present at any one time for a period of more than two hours, the provider shall be assisted by a department-approved assistant who is at least 14 years old, unless extra children are present as a result of an emergency school closing.

ITEM 22. Amend subrule 110.15(1) as follows:

**110.15(1) Limits on number of children in care.**

a. No change.

b. Of these 12 children, no more than ~~four~~ six children who are 24 months of age or younger shall be present at any one time. Whenever four children who are under the age of ~~48~~ 12 months are in care, both providers shall be present.

c. In addition to the 12 children not in school, no more than ~~two~~ four children who attend school may be present ~~for a period of less than two hours at any one time.~~

~~d. In addition to these 14 children, no more than two children who are receiving care on a part-time basis may be present.~~

~~e. d.~~ No more than 16 children shall be present at any one time when an emergency school closing is in effect.

~~f. e.~~ If more than eight children are present, both providers shall be present. Each provider shall meet the provider qualifications for child development home category C.

ITEM 23. Amend rule ~~441—120.1~~**(237A)**, definitions of “Child care home” and “Child development home,” as follows:

“*Child care home*” means a person or program providing child care to ~~five or fewer~~ any of the following children at any one time that is not registered to provide child care under this chapter, as authorized under Iowa Code section 237A.3.:

1. Five or fewer children.

2. Six or fewer children, if at least one of the children is school-aged.

“*Child development home*” means a person or program registered under this chapter that may provide child care to ~~six~~ seven or more children at any one time.

ITEM 24. Amend rule ~~441—120.3~~**(237A)** as follows:

**441—120.3(237A) Renewal of agreement.** Renewal of the child care assistance provider agreement shall be completed every 24 months. To request renewal, a provider shall submit Form 470-2890, Payment Application for Nonregistered Providers, and ~~copies of certificates of training, which shall be retained in the file~~ training completion evidence either through certificates or as updated in Iowa’s early childhood and school age professional workforce registry (i-PoWeR). The agreement renewal process shall include completion of child abuse, sex offender, and criminal record checks.

ITEM 25. Amend paragraphs **120.8(1)“j”** and **“k”** as follows:

j. Homes served by a private ~~sewer systems~~ sewage disposal system shall be ~~in compliance with discharge restrictions identified at 567—Chapter 69~~ operated and maintained to ensure the system is properly treating the wastewater and not creating an unsanitary condition in the environment. Discharge of untreated waste water from private sewage disposal systems is prohibited. Compliance shall be verified by the local board of health at the time of renewal of the child care assistance provider agreement and new application. Concerns about noncompliance shall be referred to the local county sanitarian.

k. A provider operating in a facility built before ~~1960~~ 1978 shall assess and control lead hazards before being issued an initial child care assistance provider agreement or a renewal of the provider agreement. To comply with this requirement, the provider shall:

(1) ~~Conduct a visual assessment of the facility for lead hazards that exist in the form of chipping or peeling paint; Determine if painted surfaces on the interior or exterior of the facility are chipping, peeling, or cracking or in need of repair. Painted surfaces include walls, ceilings, windows, doors, stairs, and woodwork; and~~

(2) ~~Apply If painted surfaces are in need of repair, hire an Iowa certified lead-safe renovator to make repairs or take training to become an Iowa certified lead-safe renovator. Iowa lead-safe renovators shall apply interim controls on any chipping, or peeling, or cracking paint found, using lead-safe work methods in accordance with and as defined by department of public health rules at 641—Chapters 69 and 70, unless a certified inspector as defined in 641—Chapter 70 determines that the paint is not lead-based paint; and.~~

(3) ~~Submit Form 470-4755, Lead Assessment and Control, as verification of the visual assessment and completion of interim controls, if necessary.~~

ITEM 26. Amend paragraph **120.8(3)“e”** as follows:

e. The provider shall establish procedures related to infectious disease control and handling of any bodily excrement or discharge, including or blood and breast milk. Soiled diapers shall be stored in containers separate from other waste.

ITEM 27. Amend subrule 120.9(2) as follows:

**120.9(2)** The file shall contain:

a. to d. No change.

e. A For children under the age of six, a statement of health condition signed by a physician or designee submitted annually from the date of the admission physical examination. For a child who is ~~five years of age or older and~~ enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the physician statement.

f. A list Documentation that is signed by the parent and names persons authorized to pick up the child. The authorization shall include the name, telephone number, and relationship of the authorized person to the child.

g. and h. No change.

i. Written permission from the parent for the child to attend activities away from the child care home. ~~The permission shall include:~~

(1) ~~Times of departure and arrival.~~

(2) ~~Destination.~~

(3) ~~Names of persons who will be responsible for the child.~~

j. No change.

ITEM 28. Amend subrule 120.10(7) as follows:

**120.10(7)** Approved training.

a. No change.

b. ~~Training received in a group setting must follow a presentation format that incorporates a variety of adult learning methods. The material or content of the training must be obtained from one of the entities listed in paragraph 120.10(7)“a” or an entity approved under paragraph 120.10(7)“h.”~~

c. b. Approved training shall be made available to Iowa child care providers through the child care provider training registry i-PoWeR.

d. ~~Training received in a group setting may include distance learning opportunities, such as training conducted over the Iowa communications network, online courses, or web conferencing (webinars) if:~~

(1) ~~The training meets the requirements in subrule 120.10(8);~~

(2) ~~The training is taught by an instructor and requires interaction between the instructor and the participants, such as required chats or message boards; and~~



~~(3) The training organization meets the requirements listed in this subrule or is approved by the department.~~

~~e. c.~~ The department will not approve more than eight hours of training delivered in a single day.

~~f. d.~~ The department may randomly monitor any state-approved training for quality control purposes.

~~g. e.~~ Training conducted with the provider ~~either~~ during the hours of operation of the facility, during provider lunch hours, or while children are resting must not diminish the required ratio coverage. The provider shall not be actively engaged in care and supervision and simultaneously participate in training.

~~h. f.~~ A training organization not approved by the department may submit a request for review to the department on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.